IN THE

Supreme Court of the United States

October Term, 1940.

No. 585

THE UNITED STATES OF AMERICA,

Appellant

vs.

LIM HOY, ALIAS LIM HOY,

Respondent.

BRIEF FOR LIM HOY, RESPONDENT.

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In reply to the points and issues raised by the Government in its brief, respondent raises no question as to the jurisdiction of the court or the main substance of the question presented.

The statutes involved are set out in the brief of the Government and it is only with the argument and conclusions of the Government that respondent finds himself in disagreement.

It will be remembered that the information [Tr. p. 1] charges the defendant in the court below with inducing and attempting to induce certain named persons, not contract laborers duly entitled to enter the United States under the Act of February 5, 1917, or entitled to enter under any of the laws of the United States, to migrate to the United States.

Clearly here is no charge of a violation of any of the regulations promulgated by the Commissioner of Immigration. The charge is explicit. First that the persons named in the indictment were not entitled to enter under the law of 1917 or any other law. It was the contention of the defendant in the court below that the persons seeking to come into the United States were farm laborers and that they are entitled to enter under the provision of Section 5(g) of the Farm Labor Supply Appropriation Act of February 14, 1944, and subsequent acts continuing it in effect. The significant features of Section 5 of that Act are as follows:

> "In order to facilitate the employment by agricultural employers in the United States of native born residents of North America, South America and Central America * * * desiring to perform agricultural labor in the United States * * * any such resident desiring to enter the United States for that purpose shall be exempt * * *; and any such resident shall be admitted to perform agricultural labor in the United States for such time and under such conditions * * * as may be required by regulations prescribed by the Commissioner of Immigration and Naturalization * * *; and in the event such regulations require documentary evidence of the country of birth * * * such requirement may be waived * * *. Each such resident shall be provided with an identification card (with his photograph and finger prints) to be prescribed under such regulations which shall be in lieu of all other documentary requirements * * *. *Sections 5 and 6 of such act (Immigration Act of February 5, 1917) shall not apply to the importation of aliens under this title.*" (Emphasis added.)

The above skeleton provisions of Section 5 clearly demonstrate that it was the intention of the Congress as it said in the act to facilitate agricultural workers coming in from Central and South American countries as well as Mexico in North America and that they should be exempted from Sections 5 and 6 of the Immigration Act of 1917; that they should not pay any head tax; that documentary evidence of their birth was to be waived and further that a duty was cast upon the Immigration Authorities when the worker arrived at the border for crossing to provide such person with an identification card, photograph and finger prints and after this duty was performed by the Immigration Authorities it should stand in lieu of all other documentary requirements even including registration at the time of entry or after entry as required by the Alien Registration Act of 1940.

The Act expressly says that Sections 5 and 6 of the Act of 1917 should not apply to the importation of aliens and it is Section 5 under which the prosecution in this case is brought in absolute contradiction and defiance of the terms of the Farm Labor Supply Appropriation Act.

How can it be consistently argued, in face of the plain terms of the Act itself that an offense is charged in the information?

An examination of the information shows that the defendant was charged with encouraging or soliciting the named persons to come to the United States, the solicitation or inducement being a letter supplied in the bill of particulars furnished in the lower court, which letter is written in Spanish and the translated copy shows an exchange of correspondence between the defendant and the Mexican citizens named in the letter and a fair inter-

pretation of the letter clearly indicates that the persons in Mexico desired to enter the employ of the defendant for work as agricultural field workers and that the defendant desired to employ them and that they were to come to the border and if it was necessary for them to put up a bond he would supply it, all of which instead of being contrary to the law was well within the contemplation of the Farm Labor Supply Appropriation Act and when these laborers arrived at the border the duty was cast upon the officials of the Department of Immigration and Naturalization to facilitate their entry as outlined in Section 5(g) and to supply them with identification cards, photographs and finger prints and to permit them to enter.

There is no question here of the alien attempting to judge his own admissibility under the laws or regulations covering immigration. Here the aliens seeking admission are not before the court. The defendant before the court is the employer for whose benefit the Farm Labor Supply Appropriation Act was passed. It is clear to be seen from an examination of the record that what the immigration officials did when these three Mexican laborers arrived at the border instead of supplying them with photographs, fingerprints and identification cards they were detained and searched and upon their persons was found the letter from the defendant herein, the employer of labor who was badly in need of agricultural help, and for whose benefit the act was passed, and the Immigration Authorities probably not being cognizant of the passage of the Farm Labor Supply Appropriation Act immediately came to the conclusion that the writer of the letter was guilty of a violation of Section 5 of the Immigration Act of 1917 and instead of carrying out the provisions of the most recent

law zealously sought to build up a case against the defendant.

It is idle to speak of the general immigration policy of this country because the Farm Labor Supply Appropriation Act expressly set aside the general immigration policy of this country for the duration of the war and expressly stated that the general provisions of Section 5 of that Act did not apply.

There was nothing, as far as the record shows, to prevent the immigration authorities from applying any "screening" tests that they might have in mind when these three Mexican laborers presented themselves at the border. The authorities could have inquired into their physical, moral or political standards had they so desired. Nowhere in the information or in the record or in the Government brief is it pointed out to this court what regulations the commissioner of immigration and naturalization prescribed for the entry of these farm laborers. Nor is it pointed out that these three farm laborers, or the defendant in this case, violated any of the regulations promulgated by the commissioner. In the Summary of Argument of the Government's brief it is stated that the exclusion and punitive provisions of the Immigration Act of 1917 (Sections 3 and 5) was partially modified during the war to relieve the critical shortage of farm labor. This is definitely an understatement. As was hereinbefore pointed out, Section 5(g) of the Farm Labor Supply Appropriation Act not only partially but wholly and completely modified Section 5 of the Immigration Act of 1917 in the following language:

> "Sections 5 and 6 of such act shall not apply to the importation of aliens under this title."

Can it be sincerely argued that such language constitutes only a partial modification of the prior law? If the very section of the Immigration Act of 1917, under which the defendant is being prosecuted does not apply to the importation of aliens, how then can it be said that the information on which this prosecution is based states a public offense?

The holding of the court was merely to the effect that the record in the case did not show that Section 5 of the Immigration Act of 1917 had been violated; the court held that such section had been suspended by the subsequent act and that agricultural laborers were admissible under the regulations and that as this defendant had not been shown to have violated any of the regulations or aided, induced or solicited the violation thereof the prosecution should be dismissed.

The Government did not allege or prove the violation of any regulation by the Mexican laborers or by this defendant. Therefore, the only recourse the court had was to dismiss the information.

A great deal of space in the Government's brief is devoted to what the administrative authorities may do in determining the admissibility of aliens and what the intention of Congress was in passing the Farm Labor Supply Appropriation Act. No one takes issue with the fact that the administrative authorities have certain rights and are under the compelling necessity of performing certain duties in the administration of the act and in the administration and rejection of aliens but that is all beside the point in the instant case. Here there is no charge that these aliens or this defendant in any way sought to evade or avoid any

rules and regulations promulgated by the commission. The record is completely silent that the three agricultural laborers avoided examination or interfered with the duties of the immigration authorities at Calexico. It is not charged that this defendant induced or persuaded in any way these laborers to evade the law. For ought that appears in the record it was the immigration authorities themselves who failed to perform the duty enjoined upon them to fingerprint these agricultural workers, photograph them and to supply them with an identification card. Had the immigration authorities performed this duty these agricultural workers would have been admitted. If in the screening test it had been developed that for any reason these laborers did not meet the requirements set by the regulations then, of course, they would not have been admitted. It is not contemplated by the respondent here that procedure for examination and admission of aliens has been abrogated entirely but on the other hand neither is this defendant charged with having aided or assisted any aliens in evading or avoiding any of the examination procedure outlined in the regulations. Neither is it charged that this defendant induced or encouraged an avoidance at the border of proper examination.

In this case it can be succinctly stated that from an examination of the record the immigration authorities sought to build up an offense against this defendant where none had ever been committed or contemplated.

Conclusion.

It having been stipulated at the time of the hearing that the agricultural workers mentioned in the information were in truth and fact coming into the United States as agricultural workers for the purpose of working for the defendant and it not being alleged or proved that the workers had either evaded or avoided compliance with any of the regulations promulgated by the Commissioner of Naturalization and Immigration and it affirmatively appearing that said persons named in the information were by express statutory law admissible under the Farm Labor Supply Appropriations Act, the court very properly entered an order dismissing the information and the judgment of the lower court should be therefore affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 585.—October Term, 1946.

The United States of America, Appellant, v. Lem Hoy, alias Lim Hoy.	Appeal from the District Court of the United States for the Southern District of California.

[April 7, 1947.]

Mr. Justice Black delivered the opinion of the Court.

A United States Attorney filed an information in a Federal District Court charging that the appellee, Lem Hoy, "did attempt to induce, assist, encourage, and solicit, certain alien persons to migrate to the United States as contract laborers . . . who were not alien contract laborers duly entitled to migrate to the United States under the Act of February 5, 1917, or to enter or migrate to the United States under any other law of the United States, as the defendant then and there well knew." The conduct charged was made an offense by § 5 of the 1917 Immigration Act referred to in the information. 39 Stat. 874, 879, 8 U. S. C. § 139. Hoy appeared, waived indictment, asked for a bill of particulars, and moved to dismiss the information on the ground that § 5 of the 1917 Act had been repealed by § 5 (g) of the Farm Labor Supply Appropriation Act of 1944. 58 Stat. 11, 15–16, 50 U. S. C. App., Supp. V, § 1355 (g). The bill of particulars showed that Hoy had written a letter to certain persons living in Mexico to induce them to come to the United States to work for him. In the letter Hoy told them that "it makes no difference if you pass as contraband (smuggle in), as whenever the Immigration catches you I will get you out with a bond." The letter also directed the aliens to see a man near the border who would "bring" them to Hoy for $25, and stated that Hoy would "arrange everything." It was stipulated that Hoy wanted the men to work for him as agricultural laborers.

Holding that the 1944 Farm Labor Act had made the 1917 Act inapplicable to such farm laborers, and therefore to those who induced their entry, the District Court dismissed the information. Since this dismissal was based on the construction of the 1917 Act as the Government sought to apply it in the information, the case is properly here on direct appeal from the District Court. 18 U. S. C. Supp. V § 682, 28 U. S. C. § 345.

The 1944 Farm Labor Act, by its terms, was designed to facilitate the war-time employment, and therefore the immigration into the United States for a limited stay, of agricultural laborers from North, South, and Central America, and islands adjacent thereto. In determining whether this information was properly dismissed, it is appropriate for us to consider whether Congress intended in the 1944 Act to remove all restrictions, enforceable by sanctions, against immigration into the United States of such agricultural laborers from the western hemisphere; and at the same time whether it intended to repeal, not only the provision which prohibited contract laborers from entering the country, but also, the long-standing law which made it a criminal offense to induce such persons, barred by law, to enter.[1] If the 1944 Act has these effects, it marks a complete reversal of the congressional policy which has been followed for more than half a century.[2]

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[1] Compare 39 Stat. 894, 8 U. S. C. § 163 (crime to aid or assist any person to enter who believes in violent overthrow of government); 39 Stat. 880, 43 Stat. 166, 8 U. S. C. § 145 (crime to bring to the United States an alien with certain diseases); 45 Stat. 1551, 8 U. S. C. § 180a (crime for alien to enter at any place other than at an immigration point, or to elude examination). See also 35 Stat. 1152, 18 U. S. C. § 550 which provides that "Whoever directly commits an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

[2] See 23 Stat. 332; 32 Stat. 1213; 34 Stat. 898; 41 Stat. 1008; *Holy Trinity Church* v. *United States*, 143 U. S. 457, 463–465.

In line with this policy, the purpose of the 1917 Act, according to its title, was "To regulate the immigration of aliens to, and the residence of aliens in, the United States." It provided detailed qualifications for persons to be admitted to the country. Certain persons were to be completely barred, such as idiots, epileptics, chronic alcoholics, vagrants, criminals, polygamists, prostitutes, persons afflicted with loathsome or dangerous contagious diseases, persons who advise, advocate, or teach opposition to organized government or its overthrow by force, illiterates, and contract laborers, defined as persons induced or encouraged to come to this country by offers or promises of employment. The 1917 Act further provided for deportation of improperly admitted aliens, and authorized the promulgation of regulations to enforce the various provisions looking to exclusion of all persons except those qualified to enter the United States under the prescribed statutory standards. Pursuant to the broad terms of the 1917 and other supplementary Acts, a bureau of immigration and naturalization, now a part of the Department of Justice, has been established to examine the qualifications of those seeking admission and otherwise to enforce and administer the immigration laws in the interior and at the borders.[3]

The 1944 Farm Labor Act does not on its face purport to relax the standards of the 1917 and other Acts, except in a very limited way. It does not abolish the screening, administrative and enforcement function of the immigration authorities. Indeed the sponsor of the bill on the Senate floor explained that the measure proposed made certain, by provision for strict control of immigration and immigrants, that the stay of workers admitted pursuant to its provisions would be wholly temporary, and that

[3] 22 Stat. 214, 24 Stat. 415, 26 Stat. 1085, 28 Stat. 780, 32 Stat. 825, 828, 37 Stat. 736, 737, 54 Stat. 1283, 8 U. S. C. §§ 100–103.

"we" who sponsored the bill "are not in any way interfering with the firmly established national immigration policy." [4]

Section 5 (g) of the 1944 Act, relied on as wholly excepting agricultural laborers from the restrictions of the 1917 Act, is set out below.[5] It will be noted that this section does permit entrance of agricultural workers who, but for

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[4] 90 Cong. Rec. 864 (1944).

[5] "In order to facilitate the employment by agricultural employers in the United States of native-born residents of North America, South America, and Central America, and the islands adjacent thereto, desiring to perform agricultural labor in the United States, during continuation of hostilities in the present war, any such resident desiring to enter the United States for that purpose shall be exempt from the payment of head tax required by section 2 of the Immigration Act of February 5, 1917, and from other admission charges, and shall be exempt from those excluding provisions of section 3 of such Act which relates to contract laborers, the requirements of literacy, and the payment of passage by corporations, foreign government, or others; and any such resident shall be admitted to perform agricultural labor in the United States for such time and under such conditions (but not including the exaction of bond to insure ultimate departure from the United States) as may be required by regulations prescribed by the Commissioner of Immigration and Naturalization with the approval of the Attorney General; and in the event such regulations require documentary evidence of the country of birth of any such resident which he is unable to furnish, such requirement may be waived by the admitting officer of the United States at the point where such resident seeks entry into the United States if such official has other proof satisfactory to him that such resident is a native of the country claimed as his birthplace. Each such resident shall be provided with an identification card (with his photograph and fingerprints) to be prescribed under such regulations which shall be in lieu of all other documentary requirements, including the registration at time of entry or after entry required by the Alien Registration Act of 1940. Any such resident admitted under the foregoing provisions who fails to maintain the status for which he was admitted or to depart from the United States in accordance with the terms of his admission shall be taken into custody under a warrant issued by the Attorney General at any time after entry and deported in accordance with section 20 of the Immigration Act of February 5,

this Act, would not be admitted under the former law. The only exceptions from the long list of non-admissibles under the 1917 and other Acts are these: illiterates and those who have been induced to come into the country by promises of employment, or whose passage has been paid by corporations or other persons. By specifically lifting the immigration barriers in these respects, Congress left the barriers in effect which barred physical and mental defectives, those with certain diseases, etc. And even the exceptions granted were not unconditional, for under the 1944 Act agricultural laborers could still be admitted only "for such time and under such conditions . . . as may be required by regulations prescribed by the Commissioner of Immigration and Naturalization with the approval of the Attorney General . . ."

In pursuance of their authority under this Act the immigration authorities have promulgated regulations which provide in detail for the admission of agricultural laborers who are "in all respects admissible under the immigration laws, except," as to the particular limited provisions of the 1917 Act designated in the 1944 Act. Code Fed. Regs. § 115 (Cum. Supp. 1943). And as shown by the Senate and House reports and hearings on the 1944 Act, a vast program was to be carried out to permit agricultural laborers to enter and to remain in the United States, but only for a limited time and under such conditions as conform with the immigration laws and regulations, and in accordance, so far as this case is concerned, with agreements made with the Government of Mexico.[4] Far from abolishing

1917. Sections 5 and 6 of such Act shall not apply to the importation of aliens under this title. No provision of this title shall authorize the admission into the United States of any enemy alien." § 5 (g) Farm Labor Supply Appropriation Act, 1944, 58 Stat. 11, 15–16, 50 U. S. C. App. Supp. V, 1355 (g).

[4] See H. Rep. No. 246, 78th Cong., 1st Sess., 3, 4, 6 (1943); H. Rep. No. 358, 78th Cong., 1st Sess., 8 (1943); Sen. Rep. No. 157, 78th Cong., 1st Sess., 3, 4 (1943).

the responsibilities of the immigration authorities in examining and approving these persons at the border and supervising their stay, the 1944 Act, the treaty and the regulations, although changing those responsibilities in some respects, have actually increased them. Aliens must still make a lawful entry at the places designated for their examination, screening, and registration. Those who do not meet the statutory standards of the 1917 Act, with the minor exceptions made in the 1944 Act, must be turned back. And those who are permitted to enter remain subject to supervision, control, and early deportation by immigration authorities.[7]

This brings us to the contention that Hoy cannot be prosecuted under § 5 of the 1917 Act because the 1944 Act provides that § 5 "shall not apply to the importation of aliens under this title." But Hoy was not charged with inducing or encouraging the Mexican aliens whom he wrote to come in "under this title."[8] He was allegedly inviting them to enter the country in disregard and defiance of "this title" and all other law. Thus he was specifically charged with inducing aliens to come into this country who were not entitled to enter under the 1917 Act or "under any other law of the United States as [he] then and there well knew." If this charge, as clarified by the bill of particulars, is true, he was urging aliens to come into this country without passing through the immigration stations, without regard to the length of their stay, or whether

[7] For example, under the treaty with Mexico governing wartime immigration of these farm laborers our Government has the right to determine where in the United States workers are needed most and to send them there. Other provisions of the treaty require that 10% of each worker's wages be earmarked and returned for deposit in Mexico, and that their living and working conditions meet specified standards. These provisions require close supervision of the admitted aliens by immigration authorities. 56 Stat. 1759–1768; 57 Stat. 1152–1163.

[8] The phrase "this title" refers only to the "Farm Labor Supply Appropriation Act, 1944," § 51, 58 Stat. 11, 17.

they were barred by reason of disease, physical weakness, or any of the other disqualifications set out in the 1917 and other laws or regulations.

The 1944 Act was intended to permit alien agricultural workers to enter the country for a limited time under Government rules and regulations after proper proofs to Government officials that the aliens were so qualified. It is true that the law was intended to fill the need for agricultural workers by removing the 1917 prohibition against would-be employers' inviting and inducing foreign workers to come to the United States. But we are not persuaded that the law, which provided specific limitations and requisites to entry under it, can properly be interpreted to authorize would-be employers to invite, induce and offer rewards to aliens to circumvent immigration processing and to enter the United States in disregard and defiance of law. The 1917 prohibition against employers inducing laborers to enter the country, enforceable by sanctions, removed obstacles which might hinder immigration authorities in the performance of their duties; we do not think the 1944 Act was intended to license employers to obstruct their performance. The information charged an offense and it should not have been dismissed.

Reversed.